

From: [Jacob, Fred](#)
To: [Jennifer Abruzzo](#); dchen@jbrpt.org; [Seema Nanda](#); [Lynn Rhinehart](#); [Platt, Nancy](#); [Tursell, Beth](#); [Hamilton, Lasharn](#); [Rubin, Mori](#); [Nachand, Patricia](#); [Ohr, Peter S.](#); [Leach, David E.](#); [Wilson, Nancy](#)
Subject: ART Briefing from RD Committee

Fred Jacob is inviting you to a scheduled ZoomGov meeting.

Join ZoomGov Meeting

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Meeting ID: (b) (6)

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Join by Skype for Business

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From: [Google Calendar](#) on behalf of [John@johnd.com](#)
To: [John@johnd.com](#)
Subject: Accepted: AET Drafting from RD Committee at Wind Date: 9, 2020 12:30pm - Open (5/7) (Unarchived)
Attachments: [image.png](#)

john@johnd.com
on Google Calendar
AET Drafting from RD Committee

When:
Wed Dec 9, 2020 12:30pm - Open Event Time: New York

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Location:

Location: Free

Who:

Event:

john@johnd.com

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Dunell, Mark
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Chen, Peiwen B.

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You are receiving this e-mail as the account holder(s) will give because you are an attendee of the event.

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From: [\[redacted\]](#) on behalf of [\[redacted\]](#)
To: [\[redacted\]](#)
Subject: Document: APT Working from HQ Committee of World Gov't, 2020 12-20pgs - 2pgs (37) (Excl. 1-4)(C)
Attachments: [\[redacted\]](#)
[redacted]
[redacted]
APT Working from HQ Committee

Subject: APT Working from HQ Committee

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From: [Jacob, Fred](#)
To: jabruzzo@jbrpt.org
Subject: Responses to ART Requests for Information (as of 12-7-2020)
Date: Tuesday, December 8, 2020 7:23:00 PM
Attachments: [Responses to ART Requests for Information \(as of 12-7-2020\).docx](#)

Fyi.

Responses to Agency Review Team Information Requests (as of 12/7/2020)

Items in Italics are (or could be) non-public information, requiring MOU protocols

Division of Operations

1. Please list any agency organizational HQ or regional restructuring since FY 2017.

[Added 12/7.]

During FY 17, a Cost Savings Work Group was convened to develop a plan that would allow the Agency to continue to operate if given the expected \$258M in FY 2018. Former Deputy General Counsel Jennifer Abruzzo led this Work Group. In the Operations SharePoint Folder is a copy of the August 3, 2017 Cost Savings Work Group report. Footnote 21 mentions the potential closure of smaller offices.

Pursuant to the Cost Savings Work Group recommendations, the General Counsel submitted the following recommendations to the Board (copies of recommendations attached):

1. Recommendation to close the Anchorage Resident Office submitted on November 21, 2017.
2. Recommendation to close the Tulsa Resident Office submitted on November 27, 2017.
3. Recommendation to close the San Antonio Resident Office submitted on November 28, 2017.
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To date, the only Resident Office that was closed pursuant to the Cost Savings Work Group recommendation is the Anchorage Resident Office. Since closure of the office, the area continues to be served by a Resident Agent located in Anchorage, Alaska.

2. Please list any regional offices that have closed *or are slated to be closed*. (Jennifer Abruzzo recalled 49 regional offices in FY 2017; agency briefing materials reported 48 offices in the regions.) [Updated 12/7.]

The Anchorage office closed on December 29, 2017 (not January 2017, as originally stated). There are no other regional offices slated to be closed.

3. *Any planned activities regarding office closures or consolidations.* [Added 12/7.]

Not at this time.

4. Centralization of Regional Office Functions.

- a. Information on Centralizing Compliance Officer functions
- b. Information on the Centralized Decision Writing Pilot
- c. Whether the centralized functions have affected regional office capacity to manage case handling.
- d. Information on all completed centralizations *and any upcoming centralization of offices or functions*

5. Personnel Questions. (Could be Admin/HR question.) Since January 2017:

- a. What positions have become vacant and were not backfilled; where are those positions located; and what classifications.

Where a departure has occurred and there is a need for that position in that office, the Agency has given authorization to hire for that position and the position has been posted. To the extent that a position has not been posted, a determination was made that there is no present need to fill that position.

- b. Current hiring authorizations listed in briefing book: Mostly are HQ or field hiring for support staff. Have field attorney/field examiner positions been authorized?

- c. RD Vacancies:

Is the agency currently in the process of filling any of these vacancies?

With respect to the Regional Director positions, currently there are 22 Regional Directors out of 26 Regions. The Agency has posted to fill every Regional Director vacancy that has arisen – in some cases more than once. This process led to the recent appointments of Regional Directors in Region 5 (Baltimore) Region 9 (Cincinnati) and Region 4 (Philadelphia). As to Region 1 (Boston) and Region 10 (Atlanta), the Agency has posted each position twice, but there were no viable applicants either time. With respect to Region 8 (Cleveland), the Agency's initial posting of the position did not result in an appointment, and the Agency has since reposted. The Agency's re-posting in Region 8 (Cleveland) is active, and I hope it will lead to an appointment. The Agency's posting for a Regional Director in Region 14 (St. Louis) did not produce any viable candidates. The Regions without Directors have been led on interim basis either by a sitting Director from another Region or by a manager or supervisor designated as

Acting Regional Director. This arrangement has yielded important developmental opportunities for the Agency's managers and supervisors.

If so, are they planned to be filled by 1/2020? Possibly

Any plans for consolidating RD oversight of multiple regions, like R1 and R3.

- d. Have any Schedule C positions been converted to career, and is there the possibility of doing so by 1/20/2021?

We have not converted any political appointees to permanent competitive positions, non-political excepted service positions, or career Senior Executive Service (SES).

- 6. Any elections still on hold from the March 2020 two-week suspension? [I said no, but I would confirm.]

Only one election is still pending – ABC Transit, Inc, Case 06-RD-255829. [Added 12/7]

- 7. Outreach efforts. [Added 12/7]

- a. **ART reported that GC prevented field employees other than HQ leaders (and maybe RDs/RAs) from participating in outreach activities.**

This information is incorrect. OM 20-06 Outreach, Speaking Engagements, and Recruiting Activities was issued on January 16, 2020 by the Division of Operations-Management not the General Counsel. A copy of the memo is attached in the Division of Operations Folder on SharePoint. Section A of this memo addresses Outreach to Promote a Broader Awareness of the Act and states:

[Memorandum OM 06-66, Outreach to Promote a Broader Awareness of the Act](#) introduced an initiative for proactive communication with citizen and community groups to educate those who may not be aware of the Act, including those just entering the work force. Those efforts continue to an be important Agency function and have been reinforced by the Agency's information-rich public website. The objective of such activities is communicating with the public about the Agency's existence, how individuals can file charges or petitions, and where more information about the Agency is available. We contemplate that **Board Agents**, as well as **supervisors, managers**, (emphasis added) and Regional Directors may engage in these activities, with approval from the Regional Director or designee.

Additionally, Section C of the memo addresses Speaking Engagements and states:

Generally, **supervisors, managers**, (emphasis added) and Regional Directors, rather than non-supervisory employees, should represent field offices in speaking engagements other than basic presentations to groups unfamiliar with the Agency.¹ It is the responsibility of the supervisory and managerial team to promote the Agency's mission by such engagements. Supervisors have greater access to a variety of legal and case-handling issues. This greater access is important in providing accurate information when, as often is the case, participants raise unexpected questions before, during or after a presentation.

b. Field attorneys have an outreach element; has this affected their evaluations?

Again, this information is incorrect. The Field Attorney performance plan contains four critical elements:

- Quality
- Effectiveness and Efficiency
- Establish/Maintain Effective Working Relationships
- Demonstrate Proficiency in Communication

Only two critical elements discuss communication with parties:

Establish/Maintain Effective Working Relationships

Revised effective 6/1/2016 Establish and maintain effective working relationships. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Meet and deal effectively with the public and representatives of other agencies; b) Develop rapport and cooperative working relationships with practitioners, parties, and witnesses where practicable; c) Cooperate and deal effectively with Agency staff at all levels, including respectful, collegial, and collaborative relations with peers, superiors, and supporting staff members alike; d) Demonstrate appropriate civility and sensitivity in all dealings with public and with Agency staff.

Demonstrate Proficiency in Communication

Revised effectively 6/1/2016 Demonstrate proficiency in oral and written communication necessary to the performance of assignments. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Compose, draft, and complete case-related written communication and special projects, including, but not limited to, internal memoranda, correspondence, formal documents, pleadings, reports and briefs; b) Write precisely and concisely, deploying good grammatical structure, logical organization; c) Orally communicate with Agency personnel, parties and members of the public, including, but not limited to, initiating communications, responding to questions, presenting facts and participating in meetings; d) Organize oral presentations in a logical manner, projecting confidently so that listeners can hear and understand.

As reflected above, the Field Attorney performance plan does not have an outreach element.

c. ART request for outreach tracking data since FY 2017, kept in Operations.

See spreadsheet in Division of Administration Requests folder on SharePoint.

Division of Advice Requests

1. According to the ART, when GC Robb took office, he changed the GC's position on several pending court cases; what is the status of those cases?
2. *Guidance memoranda (including ICG, GC, and Ops memos) with expectation of issuance by January 2021.*
Nothing at this time. [Added 12/7.]
3. ICG, GC, and Ops memos issued since FY 2017. [In Operations SharePoint Folder; added 12/7.]
4. Mandatory submissions to Advice (GC Memo 18-2, and any updates); list of cases currently in Advice pursuant to the mandatory submission instructions. (This list is typically provided to P&P each year.)
5. List of cases sent into Advice with brief description of the legal issues for each one, and flagging those that are COVID related
6. Briefs to the Board in cases where the GC is arguing to modify or overturn Board law.
7. Position statements that the GC has filed with the Board pursuant to rulemaking efforts.

ASCLB/CCSLB Requests

1. Notable enforcement matters and list and brief description of cases pending in circuit and district court.

Labor Relations Requests

1. BU and PA bargaining: Copies of any grievances, arbitrations, impasse proceedings/awards, and lawsuits arising out of bargaining.
 - NLRBPA v. FSIP, NLRB pleadings in SharePoint folder.

Division of Administration Requests

1. Any office space reduction plans. *[Draft plans would be nonpublic.]* [In SharePoint folder.]
2. Current written Covid protocols in the field and HQ, especially surrounding whether agency employees are required to come into the office or telework. [In SharePoint folder.]
3. Health units. What is the status of the Agency's health unit contracts, and are there any plans for health units and/or FOH contracts when people return to the office. [In SharePoint folder.]
4. FEVS: FEVS scores have fallen since 2016. What efforts has the agency taken to improve staff morale and improve FEVS scores? Copies of documents regarding any external assessments that have been done to review operations in divisions, offices, and/or field offices. [In SharePoint folder.]
5. Personnel actions or issues, initiated by management or employees since FY 17. [Agreed to start with high level statistics.] [In SharePoint folder.]
6. Performance standards and performance management plans. [Agreed to provide mission critical plans.]

In SharePoint folder are copies of the requested Performance Plans for the following positions:

GS-0905 GENERAL ATTORNEY (LABOR) – (BU 1175 - GC Side) Note - These Plans are all different based on the assigned Branch.

GS-0905 GENERAL ATTORNEY (LABOR) - (BU 1206 - GC Side)

GS-0905 ATTORNEY-ADVISER (LABOR) - (BU 1032 - Board Side)

GS-0244 LABOR MANAGEMENT RELATIONS EXAMINER - (BU 1206 - GC Side)

7. The extent to which the agency may be using Schedule F for staffing purposes and any documents reflecting any steps the Agency has considered or taken with regard to implementing Schedule F.

No action has been taken at this time.

8. Regional and Headquarters staffing numbers for GC-side and Board-side broken down into managers, supervisors, professionals and support staff for each Region, for each Division/Office/Branch in HQ, and for each Board member office.

[In DoA SharePoint Folder (added 12/6)]

Budget Requests

1. Information on the GAO and OIG investigations into budget execution in FY 18 and FY 19. For GAO audits, ART requested any information we provided to GAO, and documents GAO provided to us. [OIG has custody of its documents, and we do not have control over them.]
2. Congressional Budget Justification for FY 2022.
3. The Board is on a continuing resolution. Are there any issues meeting budgetary obligations under the CR, which is due to expire December 11, 2020?
4. Requested FY20 PAR **[Sent.]**

OCIO Requests

Detailed explanation of IT expenditures and obligations since FY 17, as well as proposed expenditures with description of enhancements

[Excel Spreadsheet with budget obligations in SharePoint folder, added 12/4]

Congressional Committee Correspondence

Correspondence with Congress (letters to, and letters from) from December 2017-present. [Not seeking constituent letters.]

Board-side Requests

[All answers these requests are in the SharePoint folder “Board-side Requests,” and/or answered in the Word document in that folder titled, “Board Case Handling and Rulemaking (12-1-2020).”]

1. Information on case processing pilot on Board-side, to meet strategic plan case processing goals; Documents regarding Board case processing protocols and processes, including but not limited to those involving the Executive Secretary's Office. [ES Memos 18-3, 20-1; In SharePoint folder.]
2. Information on Court litigation concerning NLRB Rulemaking. [In doc.]
3. Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment. [Letter from ES in SharePoint folder and description in Word document.]
4. *Plans to implement rules with pending NPRMs before January 20, 2021.* [Description of Unified Agenda items in Word document on SharePoint folder.]
5. All internal Board delegations of authority over the past four years. [In SharePoint folder.]

Case Handling Data

ART requested the following data for FY 2017-2021:

- CA/CB cases filed
- Merit factors (CA/CB cases separately)

- Appeals filed and sustaining rate (CA/CB cases separately)

- Backpay and remedies
- Settlements (non-Board informal settlements, formal Board settlements)

- Number of 10(j) requested/number authorized/win rates
- Number of 10(l) sought/win rates
- The number of 10j cases submitted to ILB from Regions (broken down by "go" and "no go"), as well as the number of "go" memos that ILB sent to the GC, how many were approved by the GC, and how many were authorized by the Board

- Number of Investigative Subpoenas, broken down by SAT and SDT

- Deferred cases under:
 - *Collyer*
 - *Dubo*

- Merit factor and litigation win rate (court enforcement)

- Case processing times (statistics on meeting GC-side strategic goals) and/or
- Data on reduction of case handling times (board + GC side) [Sent in 2020 PAR]

- Petitions filed
- Elections held

To: jabruzzo@jbrpt.org; [Seema Nanda](#); [Dora Chen](#); [Lynn Rhinehart](#)
Cc: [Tursell, Beth](#); [Hamilton, Lasharn](#)
Subject: Additional Documents on the SharePoint Site
Date: Thursday, January 28, 2021 8:49:40 PM
Attachments: [Responses to ART Requests for Information \(as of 12-14-2020\).docx](#)

All –

We wanted to let you know we have uploaded another batch of documents to the SharePoint site over the last several days, including ASCLB and CCSLB documents, Congressional Correspondence, and Advice memos and briefs. The attached Word document flags what we've uploaded and highlights the date of upload for your convenience.

I hope you all have been able to obtain regular access to the SharePoint site. If you are having any trouble, please let me know.

And I know there are still a handful of documents that we're still assembling. If you have urgent need of anything outstanding, please let me know and I'll prioritize getting it to you.

Thanks,

Fred

FRED B. JACOB • SOLICITOR

National Labor Relations Board

(202) 273-1711 (office) • (202) 316-7673 (cell) • fred.jacob@nrlrb.gov

Responses to Agency Review Team Information Requests (as of 12/7/2020)

Items in Italics are (or could be) non-public information, requiring MOU protocols

Division of Operations

1. Please list any agency organizational HQ or regional restructuring since FY 2017.

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3. *Any planned activities regarding office closures or consolidations.* [Added 12/7.]

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4. Centralization of Regional Office Functions.
[Added 12/14]

Information on Centralizing Compliance Officer functions

In June 2020, the Centralized Compliance Unit (CCU) was created to centralize the work needed to obtain compliance with informal settlement agreements and Board orders. The CCU is supervised by four supervisors in Regional field offices and is managed remotely by a member of the Division of Operations-Management, who is based on Phoenix, Arizona. Over the years, an imbalance in the workload developed since some Regions litigated more cases than other Regions. As a result, some Compliance Officers (COs) had an extremely heavy compliance case load while other COs handled only a few compliance cases. Since compliance work is portable, i.e., the work can be done in a Region other than the Region that litigated the case, efforts were undertaken to move compliance cases around to different Regions to even out the compliance case load. These efforts were met with strong resistance from the Regional Directors. Regional Directors did not want to “give up” the cases that they had litigated even though it meant more timely compliance for employees adversely affected by the unfair labor practices. Regional Directors also did not want to “pick up” additional compliance cases because they had their COs handling investigations and representation cases.

In the past, Regional Directors assigned ULP investigations and representation cases to COs. As a matter of fact, in FY 19, one Director recommended their CO for a performance quality step increase because of the amount of non-compliance work the CO assisted with. The use of COs by Regional Directors to do work other than compliance work, if there is other compliance work available that needs to be done, is not efficient, economical or a good use of Agency resources. COs are GS-13/14 level positions. The duties of this position are obtaining compliance with informal settlement agreements, Board orders and court judgments. The position description does not include investigating unfair labor practices or handling representation cases. These duties are handled by GS-11/12 & 13 Field Examiners. Despite this, Regional Directors in the past routinely assigned investigations and representation cases to the COs. The end result of this improper assignment was delays in obtaining compliance with settlements and orders because COs were busy with other work.

The centralization of compliance work has resulted in a better balance of the work so that it can be more performed in a more efficient and effective manner. The following are other benefits of the CCU:

1. The CCU now makes it possible for teams of COs to work together and allows for a more open dialogue during which there can be brainstorming of issues.
2. The open dialogue promotes more creativity in our compliance resolutions.
3. The Agency is now better able to provide training for the COs so that they can develop their skills.
4. Assistance is now more readily available to Regions and their staffs to assist and provide training on compliance
5. Having supervisors who are knowledgeable and comfortable in compliance will strengthen the compliance work and ensure consistency across the Regions.
6. Field supervisors and managers do not have the specialized skills needed to effectively handle compliance cases. By centralizing compliance, the managers and supervisors can better focus on unfair labor practice and representation investigations, elections and hearings – their areas of expertise.

In the first several months, the CCU has made great strides in obtaining quicker compliance with informal settlement agreements (ISAs).

FY 2020

*1243 ISAs closed

*Average number of days between approval and closing was **137.6**

*904 ISAs closed prior to 6/1/20 in an average of **127**

*339 ISAs closed after 6/1/20 in an average of **163** days

271 ISA closed after 6/1/20 but approved prior to 6/1/20 in an average of **184 days

68 ISA closed after 6/1/20 and approved after 6/1/20 in an average of **78 days – reducing the time it took to secure compliance with an ISA by approximately 42%.

FY 2021

*141 ISAs closed in average of **220.2** days

*51 ISAs approved prior to 6/1/20 closed in average of **454** days

*90 ISA approved after 6/1/20 closed in average of **90** days

449 ISAs currently pending compliance

*137 approved prior to 6/1/20 pending an average of **1006** days

*312 approved on or after 6/1/20 pending an average of **55** days

Once the CCU closes out the backlog of ISA cases that were approved prior to June 1, 2020, they are on track with securing compliance well under 90 days from the approval of the ISA, which would be about 47 days quicker than in previous years.

The CCU has had similar successes with formal compliance cases. A formal compliance case is defined as a case in which a Board order issue. An active formal compliance case

is a case that is being worked on by a Compliance Officer. Within the first month of its existence, the CCU found approximately 50 formal cases that had either had not been worked on or had “fallen between the cracks”. Having a central location where the notifications of issuance of Board orders and court judgments are sent ensures that all cases are immediately put onto the Compliance Report and immediately assigned to either a CO or Compliance Assistant.

In the short six months of its existence, the CCU has also made strides in reducing the backlog of formal compliance cases.

As of 6/1/20, the beginning of the CCU, there were 270 active formal compliance cases pending
*cases were pending an average of **754.6** days from issuance of Board order or court judgment

Since 6/1/20 101 formal compliance cases have been closed

*closed cases had been pending an average of **743** days from the issuance of Board order or court judgment

305 active formal compliance cases currently pending compliance

*166 active formal compliance cases where Board order/court judgments issued prior to 6/1/20
(before the CCU took over)

*cases pending an average of **1029.7** day from issuance of Board order/court judgment

* 139 active formal compliance cases where Board order/court judgments issued after 6/1/20

*cases pending an average of **64** days from issuance of Board order/court judgment

In FY 20, the CCU relied on the Regions to assist with mailing of Notices and backpay checks because the Regions’ supply budgets already accounted for these expenses. In FY 21, in light of the pandemic and everyone working remotely, these expenses and responsibilities have been transferred to the CCU.

In the upcoming months, the CCU will conduct compliance related training sessions for the Regions and establish a network by which Regions can obtain assistance with compliance related tasks.

Information on the Centralized Decision Writing Pilot

The Centralized Decision Writing Program was announced on July 30, 2018 in ICG 18-06, Changes to Case Processing Part 1 and was implemented on March 2, 2020. The goal of centralizing decision-writing is to have a cadre of skilled decision-writers who possess the time, resources, and specialized skills to efficiently draft decisions, the quality of which will be more consistent across Regional and District lines. By having certain Board Agents designated on a rotating basis to write decisions, they can focus on writing the decisions and complete them faster than a Board Agent who also has a full case load of cases to investigate. Prior to the centralization, Board Agents wrote so few decisions that they needed to “relearn” the skills needed to complete the task. Having individuals focus only on decision writing gives them an opportunity to develop the expertise in decision writing which results in higher quality and more timely decisions. At the present time, there are four Centralized Decision Writing Managers, one in each District, and ten Decision Writers, three in Districts I and III and two in Districts II and IV. From time to time, Decision Writers may be assigned to write decisions for Regions outside of their home District. However, the decisions concerning these cases continue to be made by the Regional Director from the Region in which the case arose.

Whether the centralized functions have affected regional office capacity to manage case handling.

Centralization of these functions have not affected regional offices capacity to manage case handling. The FY 20 Strategic Goal for the reduction in the average number of days from filing to disposition was 10%. Even with the challenges of COVID-19 and mandatory/non-mandatory telework, the Regions exceeded this goal with an average of 17.9% reduction in the average number of days between filing to disposition.

As reflected in the chart below, the average number of cases per Board agent has stayed steady over the years even with the centralization:

Fiscal Year	Case Intake	Case/Agent w/ Compliance*	Case/Agent w/o Compliance**
FY 2011	25,003	38	39
FY 2012	24,186	37	39
FY 2013	23,867	39	42
FY 2014	23,099	38	40
FY 2015	23,018	39	41
FY 2016	23,861	43	45
FY 2017	21,637	39	41
FY 2018	20,954	41	43
FY 2019	20,643	43	45
FY 2020	17,633	38	40

Information on all completed centralizations *and any upcoming centralization of offices or functions*

Centralized Language Specialist Program

In FY 18, the Agency began the Centralized Language Specialist Pilot Program. The pilot involved centralizing the assignments of interpreting and translating services assisted the Agency in many ways. At the time, the Language Specialist reported to the Regional Director/Office Manager in the Region where they were assigned. Most often, Field Offices shared the language specialists based on needs. However, from time to time, when a Region with no specialist contacted a Region with a language specialist, the responding Region stated that “its” specialist was needed for services in “its” Region. Still, other Regions with specialists stated inappropriately that the specialist is needed to perform administrative tasks. Further, the isolation of specialists by Regions with no centralized review of performance did not ensure a consistency of quality in the work product in this area. Finally, it appeared that certain specialists are routinely contacted to perform duties outside of their assigned office. Thus, certain specialists had more work and others were underutilized. During the pilot, the Language Specialist reported to an acting Lead Language Specialists. Four individuals were selected from a Notice of Vacancy to rotate into the acting Lead Language Specialist Pilot Program. The Pilot Program was such a success, it became a permanent program and a Lead Language Specialist was selected.

The Centralized Language Specialist Program has improved the quality of translations/interpretations and the timeliness of the work. Language Specialists now spend 100% of their time performing mission assistance work for the Regional Offices. The Program has also reduced the amount the Agency pays to outside contractors. The Language Specialists are supervised by the Lead Language Specialist, who is based in Region 5, Baltimore. There has been no impact on how much they are performing mission assistance work because 100% of their work is mission assistance work, and, when called upon to do so, they perform information and outreach work. With regards to providing “information” assistance, the existence of the centralized Language Specialist Program ensures the availability of a Spanish speaking Language Specialists when Spanish speaking members of the public call. This service was not available prior to the Centralized Language Specialist Program.

Centralized Docketing

OM 17-20 announced a centralized docketing pilot program for unfair labor practice charges. The program is still in existence today. Region 20 provides docketing assistance as needed for Regions 27, 31 and 32. Region 25 provides docketing assistance for Regions 13 and 18. The Regional Directors and Office Managers appear to be extremely satisfied with this program.

5. **Personnel Questions.** (Could be Admin/HR question.) Since January 2017:

- a. What positions have become vacant and were not backfilled; where are those positions located; and what classifications.

Where a departure has occurred and there is a need for that position in that office, the Agency has given authorization to hire for that position and the position has been posted. To the extent that a position has not been posted, a determination was made that there is no present need to fill that position.

- b. Current hiring authorizations listed in briefing book: Mostly are HQ or field hiring for support staff. Have field attorney/field examiner positions been authorized?

[Added 12/14]:

The Agency has experienced a steady drop in intake from 2012 to 2020, continuing an earlier trend that can be traced back to 1980, when the overall intake was 57,381 total representation and unfair labor practice cases, as compared to 17,633 in 2020. While the decline has been remarkably steady on a national level, in various localities there have occasionally been very sharp drops or temporary spikes in filings. Historically, the Agency’s approach had been to add staff in field locations

where filings spiked, and where filings dropped off to reduce staff only by ordinary attrition. This has resulted in the current imbalances seen across the country.

The Regional offices have very different caseloads, ranging from approximately 400 to over 1,000 cases per year. Additionally, caseloads fluctuate within each Region. These fluctuations impact the staffing levels needed in the various Regions. In some instances, a lower caseload of a Region compared to other Regions does not warrant full-time staffing of a position without additional duties. Indeed, the overall decline of the number of cases filed with the Agency over the past decade also affects staffing decisions.

The Division of Operations-Management has hire authorization, if needed, for field attorney/field examiner positions. In FY20, total case intake (representation and unfair labor practices) was 17,633, while for the same period in FY19, total cases were 20,643. This represents a 14.5% decrease in cases for FY20. In light of the unprecedented 14.5% decline in cases, additional hiring for the field, except for a few critical positions, was not justified.

To date, the case intake in FY 21 does not support hiring for the field. FY21 through November 31, 2020, total case intake (representation and unfair labor practices) was 2,593, while for the same period in FY20, total cases were 3,455. This represents a 25% decrease in cases for FY21. The current number of FTEs in the field is 4% lower than the number of FTEs (830) employed in the field on September 30, 2019. If the number of FTEs were to be reduced by the same decrease in case intake (25%), the number of FTEs would be 623.

At the present time due to the COVID-19 pandemic, the entire Agency is working non-mandatory telework. This means all investigations are being handled remotely. In light of this, since March, the emphasis has been to share resources, both professional and administrative professional, rather than hiring FTEs. As of November 19, 2020, the national average case load per agent was six. The case load per agent in each Region was as follows:

Region	Pending C Cases	Pending R Cases*	Cases Per Agent
01	128	23	7
02	129	24	7
03	46	20	5
04	161	19	11
05	161	38	10
06	54	22	8
07	173	22	8
08	70	9	7
09	98	10	6
10	115	13	5
12	193	8	8
13	140	15	7
14	52	12	4
15	180	4	13
16	153	12	9
18	91	25	6
19	138	35	8
20	80	21	5
21	92	16	5
22	187	13	12
25	83	12	9
27	38	7	5
28	131	15	8
29	41	21	3
31	99	18	7
32	42	17	5

*Using R case intake from 8/10/20-11/10/20

c. RD Vacancies:

Is the agency currently in the process of filling any of these vacancies?

With respect to the Regional Director positions, currently there are 22 Regional Directors out of 26 Regions. The Agency has posted to fill every Regional Director vacancy that has arisen – in some cases more than once. This process led to the recent appointments of Regional Directors in Region 5 (Baltimore) Region

9 (Cincinnati) and Region 4 (Philadelphia). As to Region 1 (Boston) and Region 10 (Atlanta), the Agency has posted each position twice, but there were no viable applicants either time. With respect to Region 8 (Cleveland), the Agency's initial posting of the position did not result in an appointment, and the Agency has since reposted. The Agency's re-posting in Region 8 (Cleveland) is active, and I hope it will lead to an appointment. The Agency's posting for a Regional Director in Region 14 (St. Louis) did not produce any viable candidates. The Regions without Directors have been led on interim basis either by a sitting Director from another Region or by a manager or supervisor designated as Acting Regional Director. This arrangement has yielded important developmental opportunities for the Agency's managers and supervisors.

If so, are they planned to be filled by 1/2020? Possibly

Any plans for consolidating RD oversight of multiple regions, like R1 and R3.

- d. Have any Schedule C positions been converted to career, and is there the possibility of doing so by 1/20/2021?

We have not converted any political appointees to permanent competitive positions, non-political excepted service positions, or career Senior Executive Service (SES).

6. Any elections still on hold from the March 2020 two-week suspension? [I said no, but I would confirm.]

Only one election is still pending – ABC Transit, Inc, Case 06-RD-255829. **[Added 12/7]**

7. Outreach efforts. **[Added 12/7]**

- a. **ART reported that GC prevented field employees other than HQ leaders (and maybe RDs/RAs) from participating in outreach activities.**

This information is incorrect. OM 20-06 Outreach, Speaking Engagements, and Recruiting Activities was issued on January 16, 2020 by the Division of Operations-Management not the General Counsel. A copy of the memo is attached in the Division of Operations Folder on SharePoint. Section A of this memo addresses Outreach to Promote a Broader Awareness of the Act and states:

[Memorandum OM 06-66, Outreach to Promote a Broader Awareness of the Act](#) introduced an initiative for proactive communication with citizen and community groups to educate those who may not be aware of the Act, including those just entering the work force. Those efforts continue to an be important Agency function and have been reinforced by the Agency's

information-rich public website. The objective of such activities is communicating with the public about the Agency's existence, how individuals can file charges or petitions, and where more information about the Agency is available. We contemplate that **Board Agents**, as well as **supervisors, managers**, (emphasis added) and Regional Directors may engage in these activities, with approval from the Regional Director or designee.

Additionally, Section C of the memo addresses Speaking Engagements and states:

Generally, **supervisors, managers**, (emphasis added) and Regional Directors, rather than non-supervisory employees, should represent field offices in speaking engagements other than basic presentations to groups unfamiliar with the Agency.¹ It is the responsibility of the supervisory and managerial team to promote the Agency's mission by such engagements. Supervisors have greater access to a variety of legal and case-handling issues. This greater access is important in providing accurate information when, as often is the case, participants raise unexpected questions before, during or after a presentation.

b. Field attorneys have an outreach element; has this affected their evaluations?

Again, this information is incorrect. The Field Attorney performance plan contains four critical elements:

- Quality
- Effectiveness and Efficiency
- Establish/Maintain Effective Working Relationships
- Demonstrate Proficiency in Communication

Only two critical elements discuss communication with parties:

Establish/Maintain Effective Working Relationships

Revised effective 6/1/2016 Establish and maintain effective working relationships. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Meet and deal effectively with the public and representatives of other agencies; b) Develop

rapport and cooperative working relationships with practitioners, parties, and witnesses where practicable; c) Cooperate and deal effectively with Agency staff at all levels, including respectful, collegial, and collaborative relations with peers, superiors, and supporting staff members alike; d) Demonstrate appropriate civility and sensitivity in all dealings with public and with Agency staff.

Demonstrate Proficiency in Communication

Revised effectively 6/1/2016 Demonstrate proficiency in oral and written communication necessary to the performance of assignments. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Compose, draft, and complete case-related written communication and special projects, including, but not limited to, internal memoranda, correspondence, formal documents, pleadings, reports and briefs; b) Write precisely and concisely, deploying good grammatical structure, logical organization; c) Orally communicate with Agency personnel, parties and members of the public, including, but not limited to, initiating communications, responding to questions, presenting facts and participating in meetings; d) Organize oral presentations in a logical manner, projecting confidently so that listeners can hear and understand.

As reflected above, the Field Attorney performance plan does not have an outreach element.

c. ART request for outreach tracking data since FY 2017, kept in Operations.

See spreadsheet in Division of Administration Requests folder on SharePoint.

Division of Advice Requests

1. According to the ART, when GC Robb took office, he changed the GC's position on several pending court cases; what is the status of those cases?
2. *Guidance memoranda (including ICG, GC, and Ops memos) with expectation of issuance by January 2021.*

Nothing at this time. [Added 12/7.]

3. ICG, GC, and Ops memos issued since FY 2017. [In Operations SharePoint Folder; added 12/7.]
4. Mandatory submissions to Advice (GC Memo 18-2, and any updates); list of cases currently in Advice pursuant to the mandatory submission instructions. (This list is typically provided to P&P each year.) [Added 12/11.]

We have provided all GC memos concerning mandatory submissions to Advice as well as emails sent to the Regions concerning Advice submissions.

5. List of cases sent into Advice with brief description of the legal issues for each one, and flagging those that are COVID related [Added 12/11.]

Advice tracks current cases only (which is what is requested in question 4). The COVID related cases indicate such in the short case summaries.

6. Briefs to the Board in cases where the GC is arguing to modify or overturn Board law. [Added 12/11.]

We have added Advice briefs. Operations may need to work with the Regions to collect briefs the Regions may have filed.

7. Position statements that the GC has filed with the Board pursuant to rulemaking efforts. [Added 12/11.] We have added Advice briefs only. Operations will check for additional briefs which it may have drafted, such as briefs/comments filed regarding the 2014 Election Rule.

ASCLB/CCSLB Requests

1. Notable enforcement matters and list and brief description of cases pending in circuit and district court.

[Added 12/14]:

From CCSLB:

1. List of all pending district and appellate court cases.

From ASCLB:

1. List of all pending cases. The list contains over 120 entries. It was not feasible to provide a summary of these pending case.
2. List of all significant pending cases with summary of each case. This document contains non-public information and is watermarked as such.

Labor Relations Requests

1. BU and PA bargaining: Copies of any grievances, arbitrations, impasse proceedings/awards, and lawsuits arising out of bargaining.
 - NLRBPA v. FSIP, NLRB pleadings in SharePoint folder.

Division of Administration Requests

1. Any office space reduction plans. *[Draft plans would be nonpublic.]* [In SharePoint folder.]
2. Current written Covid protocols in the field and HQ, especially surrounding whether agency employees are required to come into the office or telework. [In SharePoint folder.]
3. Health units. What is the status of the Agency's health unit contracts, and are there any plans for health units and/or FOH contracts when people return to the office. [In SharePoint folder.]
4. FEVS: FEVS scores have fallen since 2016. What efforts has the agency taken to improve staff morale and improve FEVS scores? Copies of documents regarding any external assessments that have been done to review operations in divisions, offices, and/or field offices. [In SharePoint folder.]
5. Personnel actions or issues, initiated by management or employees since FY 17. [Agreed to start with high level statistics.] [In SharePoint folder.]
6. Performance standards and performance management plans. [Agreed to provide mission critical plans.]

In SharePoint folder are copies of the requested Performance Plans for the following positions:

GS-0905 GENERAL ATTORNEY (LABOR) – (BU 1175 - GC Side) Note - These Plans are all different based on the assigned Branch.

GS-0905 GENERAL ATTORNEY (LABOR) - (BU 1206 - GC Side)

GS-0905 ATTORNEY-ADVISER (LABOR) - (BU 1032 - Board Side)

GS-0244 LABOR MANAGEMENT RELATIONS EXAMINER - (BU 1206 - GC Side)

7. The extent to which the agency may be using Schedule F for staffing purposes and any documents reflecting any steps the Agency has considered or taken with regard to implementing Schedule F.

No action has been taken at this time.

8. Regional and Headquarters staffing numbers for GC-side and Board-side broken down into managers, supervisors, professionals and support staff for each Region, for each Division/Office/Branch in HQ, and for each Board member office.

[In DoA SharePoint Folder (added 12/6)]

Budget Requests

1. Information on the GAO and OIG investigations into budget execution in FY 18 and FY 19. For GAO audits, ART requested any information we provided to GAO, and documents GAO provided to us. [OIG has custody of its documents, and we do not have control over them.]

2. Congressional Budget Justification for FY 2022.

The Chief Financial Officer reports that we do not currently have a Congressional Justification document for FY2022. We are expecting the OMB FY2022 Budget Passback soon, however. Based on the OMB FY2022 Budget Passback, the NLRB will develop the Congressional Justification document that will be submitted to Congress the first Monday of February. [Added 12/11.]

3. The Board is on a continuing resolution. Are there any issues meeting budgetary obligations under the CR, which is due to expire December 11, 2020?

The Chief Financial Officer reports she is not aware of any issues with meeting budgetary obligations under this CR. Funds were allocated to the Program Areas according to the approved CR Plan. [Added 12/11.]

4. Requested FY20 PAR [Sent.]

OCIO Requests

Detailed explanation of IT expenditures and obligations since FY 17, as well as proposed expenditures with description of enhancements

[Excel Spreadsheet with budget obligations in SharePoint folder, added 12/4]

Congressional Committee Correspondence

Correspondence with Congress (letters to, and letters from) from December 2017-present. [Not seeking constituent letters.]

[Added to SharePoint folder 12/9, 12/10.]

Board-side Requests

[All answers these requests are in the SharePoint folder "Board-side Requests," and/or answered in the Word document in that folder titled, "Board Case Handling and Rulemaking (12-1-2020)."]

1. Information on case processing pilot on Board-side, to meet strategic plan case processing goals; Documents regarding Board case processing protocols and processes, including but not limited to those involving the Executive Secretary's Office. [ES Memos 18-3, 20-1; In SharePoint folder.]
2. Information on Court litigation concerning NLRB Rulemaking. [In doc.]
3. Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment. [Letter from ES in SharePoint folder and description in Word document.]
4. *Plans to implement rules with pending NPRMs before January 20, 2021.* [Description of Unified Agenda items in Word document on SharePoint folder.]
5. All internal Board delegations of authority over the past four years. [In SharePoint folder.]
[2016 Budget delegation to Chairman added 12/9]

Case Handling Data

ART requested the following data for FY 2017-2021:

- CA/CB cases filed
- Merit factors (CA/CB cases separately)

- Appeals filed and sustaining rate (CA/CB cases separately)

- Backpay and remedies
- Settlements (non-Board informal settlements, formal Board settlements)

- Number of 10(j) requested/number authorized/win rates
- Number of 10(l) sought/win rates
- The number of 10j cases submitted to ILB from Regions (broken down by "go" and "no go"), as well as the number of "go" memos that ILB sent to the GC, how many were approved by the GC, and how many were authorized by the Board

- Number of Investigative Subpoenas, broken down by SAT and SDT

- Deferred cases under:
 - *Collyer*
 - *Dubo*

- Merit factor and litigation win rate (court enforcement)

- Case processing times (statistics on meeting GC-side strategic goals) and/or
- Data on reduction of case handling times (board + GC side) [Sent in 2020 PAR]

- Petitions filed
- Elections held